

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

THE EXECUTIVE BOARD OF THE MISSOURI BAPTIST CONVENTION,
A MISSOURI NON-PROFIT CORPORATION, ET AL.,

Respondent

v.

MISSOURI BAPTIST FOUNDATION,

Appellant

DOCKET NUMBER **WD74051**

DATE: September 18, 2012

Appeal From:

Circuit Court of Cole County, MO
The Honorable Byron L. Kinder, Judge

Appellate Judges:

Division Four

James Edward Welsh, C.J., Thomas H. Newton, J., Owens L. Hull, Sp. J.

Attorneys:

Laurence Tucker, Kansas City, MO	Counsel for Appellant
Thomas Weaver, St. Louis, MO	Co-Counsel for Appellant
Jeffery McPherson, Clayton, MO	Co-Counsel for Appellant

Attorneys:

Michael Whitehead, Kansas City, MO	Counsel for Respondents
Glen Masters, North Kansas City, MO	Co-Counsel for Respondents
James Freeman, III, Kansas City, MO	Co-Counsel for Respondents
Charles Hatfield, Jefferson City, MO	Co-Counsel for Respondents
Michael Blanton, Leawood, KS	Co-Counsel for Respondents
Jim Shoemake, St. Louis, MO	Counsel for Respondent, MO. Baptist Home
Clyde Farris, Jr., Clayton, MO	Counsel for Respondent, MO. Baptist University

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

THE EXECUTIVE BOARD OF THE MISSOURI BAPTIST
CONVENTION, A MISSOURI NON-PROFIT CORPORATION, ET
AL., Respondent, v. MISSOURI BAPTIST FOUNDATION, Appellant

WD74051

Cole County

Before Division Four Judges: Welsh, C.J., Newton, J., and Hull, Sp. J.

The Foundation serves as the trust services agency of the Convention. The Foundation's 1994 Charter required the Foundation to submit charter amendments to the Board of the Convention (the Board) for its recommendation of approval to the Convention and to receive approval from the Convention. In Counts VII, VIII, and IX of a multi-count petition asserted against multiple defendants, the Board alleged, *inter alia*, that in 2001 the Foundation had purported to execute two sets of amendments that violated the provision requiring approval. The trial court subsequently granted the Board's motion for partial summary judgment on Count VII of the petition and certified its judgment for interlocutory appeal, leaving Counts VIII and IX remaining against the Foundation. The Foundation appeals, raising five points.

DISMISSED.

Division Four Holds:

We address only the Foundation's first point because it is dispositive of this appeal. The Foundation contends the trial court erred in entering partial summary judgment and declaring the order immediately appealable because it left matters to be determined and did not resolve all issues between the Foundation and the Board.

In a suit involving multiple claims or parties, Rule 74.01(b) permits an appeal from a partial judgment if the trial court indicates there is no just cause for delay and the partial judgment is final as to at least one claim. A judgment on a claim is not final if it disposes of only one of several remedies and leaves other remedies relating to the same legal rights open for future adjudication. The Missouri Supreme Court has determined that a judgment is final as to particular claims if it disposes of a distinct "judicial unit," which is the final judgment on a claim, and not a ruling on some of several issues arising out of the same transaction or occurrence.

The trial court's partial summary judgment is not final and thus not appealable. First, the judgment did not fully resolve the remedies or the legal issues within Count VII. It explicitly ordered "additional proceedings relating to two other remedies," and did not reach contract claims that were a central legal issue in both Counts VII and VIII. Second, Count VII was not a distinct judicial unit because Counts VIII and IX arose from the same set of facts, and the same transactions and occurrences, as Count VII. Finally, the judgment itself acknowledges that it

does not fully and completely resolve all issues in Count VII. Our case law has held that the inclusion of such language negates a finding that the partial summary judgment disposed of a distinct judicial unit.

Appeal dismissed.

Opinion by Thomas H. Newton, Judge

September 18, 2012

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.